

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

Editor's Note: The following Notice of Final Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1663.)

[R13-95]

PREAMBLE

- | <u>1. Articles, Parts, and Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
|---|---------------------------------|
| Table 1 | Amend |
| R4-33-104 | Amend |
| Article 6 | New Article |
| R4-33-601 | New Section |
| R4-33-602 | New Section |
| R4-33-603 | New Section |
| R4-33-604 | New Section |
| R4-33-605 | New Section |
| R4-33-606 | New Section |
| Article 7 | New Article |
| R4-33-701 | New Section |
| R4-33-702 | New Section |
| R4-33-703 | New Section |
| R4-33-704 | New Section |
| R4-33-705 | New Section |
| R4-33-706 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 36-446.03(A)
Implementing statute: A.R.S. §§ 36-446.03(B)(11) and (12), (O), and (P), and 41-1072
- 3. The effective date for the rules:**
August 4, 2013
- a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Not applicable
- b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
- 4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 18 A.A.R. 1350, June 15, 2012
Notice of Proposed Rulemaking: 18 A.A.R. 2904, November 9, 2012

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Notice of Supplemental Proposed Rulemaking: 19 A.A.R. 386, March 8, 2013

5. The agency's contact person who can answer questions about the rulemaking:

Name: Allen Imig, Executive Director
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6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

During the 2011 legislative session, the legislature enacted SB1038, which transferred regulatory oversight of training programs for assisted living facility managers from the Arizona Department of Health Services to the Board. The Board is charged with establishing standards for and approving training programs for managers and caregivers of assisted living facilities; specifically authorized to make nonrefundable fees for review of initial and renewal applications; and authorized to impose discipline if a training program violates the Board's rules. The Board is making the rules necessary to fulfill its statutory responsibility.

Based on comments received regarding the Notice of Proposed Rulemaking, the Board determined that it needed to make changes to the proposed rules regarding training of caregivers. In a Notice of Supplemental Proposed Rulemaking, the Board:

- Reduced the total number of hours of training from 136 to 104 (a 24% reduction);
- Eliminated the 40 hours of practicum and substituted 16 hours of skills training;
- Eliminated the requirement that practicum or skills training occur at an assisted living facility with which the training program has a contract;
- Reduced the number of hours that may be obtained by distance learning from 30 to 26;
- Expanded the qualifications that make an individual able to serve as a training program instructor; and
- Reduced the number of years of experience required to be qualified as a training program instructor.

The current training for assisted living facility caregivers is 62 hours. Those who commented generally supported the increased number of hours of training but believed 136 were too many. They suggested lack of training is not the reason that some residents receive inadequate care. They also suggested the increased training could lead to a shortage of qualified caregivers, which would aggravate the problem of inadequate care. They suggested that the required hours be reduced and those qualified to serve as a training program instructor expanded. Both of these changes were made.

To facilitate transition from regulatory oversight provided by the Arizona Department of Health Services to that provided by the Board, the Board has determined that it will allow six months after these Articles become effective for a training program to comply fully with all regulatory requirements.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board neither reviewed nor relied on a study relevant to this rulemaking in its evaluation of or justification for the rulemaking. The rulemaking does not rely on scientific principles or methods.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The primary economic impact results from the legislative decision to require that assisted living facility training programs be approved by the Board. The economic impact from these rules results from the requirement that an application for approval be submitted, fees paid, and compliance with requirements designed to ensure that assisted living facility managers and caregivers are trained adequately to care for the fragile individuals entrusted to them.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

No changes were made between the proposed, including the supplemental proposed, and final rules.

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11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

In response to the Notice of Supplemental Proposed Rulemaking (NSPR), Lilah Dorsey, owner and instructor of Complete Assisted Living Training, again submitted essentially the same comments she made in response to the Notice of Proposed Rulemaking and that the Board addressed in the Notice of Supplemental Proposed Rulemaking. Ms. Dorsey's comments and the Board's analysis and response follow:

COMMENT	ANALYSIS	RESPONSE
The hours of training required in the revised proposal are still excessive.	In the NSPR, the Board reduced the number of training hours by 24% and reduced the hours of skills training by 60%.	The Board determined that the required number of training hours is the minimum that will protect the frail and elderly users of assisted living facility care. No change
Do not eliminate self-study as a method of teaching.	Nothing in the rules indicates that self-study cannot be used. However, as Ms. Dorsey indicates, self-study is done at the student's own pace. As a result, the training hours involved cannot be calculated for self-study. Self-study is best used as a supplement to the required classroom and skills training.	No change
I do not see "documentation" anywhere in the proposal.	Documentation is mentioned several times regarding medication management. Ms. Dorsey is free to include documentation as part of her teaching regarding communication and interpersonal skills or other subjects.	No change
Development of a service plan is generally not the duty of a caregiver. The focus for a caregiver should be on using the service plan.	A caregiver may not actually develop a service plan but needs to understand what one is and how it is developed. The rules include use of the service plan as part of the curriculum.	No change
Fire-code requirements are likely to vary from city to city.	The focus of this part of the curriculum is on planning and acting to save lives in the event of a fire or other emergency. City fire codes generally are not specific regarding this kind of planning.	No change
The teaching about home environment and maintenance will be general because each facility will have individualized procedures for laundry and housekeeping.	Ms. Dorsey is correct about teaching general principles but the Board believes she is wrong when she contends that fewer than five hours are needed to address this important topic.	No change
Some of the caregiver skills listed are not basic but rather are medical.	The Board disagrees. In today's world, caregivers routinely deal with feeding tubes and catheters and prevention and care of wounds,	No change
The curriculum contains no mention of restraints.	R4-33-603(B)(3)(a)(i), regarding the curriculum for managers, addresses restraints. Ms. Dorsey is free to include a discussion of restraints for caregivers. She might want to include it as part of the teaching regarding ethical issues and patient rights.	No change

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COMMENT	ANALYSIS	RESPONSE
Activities and recreation need to be added and students should be required to prepare an activity calendar for a week.	The standards provided are minimums. Ms. Dorsey is free to include this additional information as long as the required information is included.	No change
I do not use a computer and audiovisual materials in teaching. These requirements should be adjusted.	The rules do not require Ms. Dorsey to use a computer or audiovisual materials. However, the Board believes that both are essential to quality teaching in today's environment.	No change
The rules require that the publisher of the textbook used be revealed but I write and publish my own materials. Will this no longer be allowed?	Ms. Dorsey needs only to indicate that she prepares and publishes her own materials.	No change

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There are federal laws such as the Americans with Disabilities Act, OSHA, and employment-related laws that apply to all employers. There is no federal law specifically applicable to assisted living facilities.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rules were not previously made, amended, or repealed as emergency rules.

15. The full text of the rules follows:

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CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

ARTICLE 1. GENERAL

Section

Table 1. Time-frames (in days)

R4-33-104. Fees

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

Section

R4-33-601. Definitions

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

R4-33-603. Curriculum for Assisted Living Facility Manager Training Program

R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program

R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program

R4-33-606. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

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ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS

Section

<u>R4-33-701.</u>	<u>Definitions</u>
<u>R4-33-702.</u>	<u>Minimum Standards for Assisted Living Facility Caregiver Training Program</u>
<u>R4-33-703.</u>	<u>Curriculum for Assisted Living Facility Caregiver Training Program</u>
<u>R4-33-704.</u>	<u>Application for Approval of an Assisted Living Facility Caregiver Training Program</u>
<u>R4-33-705.</u>	<u>Renewal of Approval of an Assisted Living Facility Caregiver Training Program</u>
<u>R4-33-706.</u>	<u>Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination</u>

ARTICLE 1. GENERAL

Table 1. Time-frames (in days)

Type of License	Overall Time-Frame Time-frame	Administrative Review Time-Frame Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-Frame Time-frame	Time to Respond to Request for Additional Information
Initial License R4-33-201 and R4-33-202 A.R.S. §§ 36-446.04(A) and 36-446.05	135	30	90	105	60
Renewal of License R4-33-206 A.R.S. § 36-446.07(E)	75	30	15	45	15
Temporary License R4-33-203 A.R.S. § 36-446.06	135	30	90	105	60
Continuing Education Program Approval R4-33-502 A.R.S. § 36-446.07(E) and (F)	60	15	30	45	15
Administrator-in-Training Program Approval R4-33-301 A.R.S. § 36-446.04	60	15	30	45	15
Initial Certification R4-33-401 A.R.S. § 36-446.04(B)	135	30	90	105	60
Renewal of Certification R4-33-405 A.R.S. § 36-446.07(F)	75	30	15	45	15
Temporary Certification R4-33-402 A.R.S. § 36-446.06	135	30	90	105	60
<u>Initial Approval of an Assisted Living Facility Manager or Caregiver Train- ing Program</u> <u>R4-33-604, R4-33-704, A.R.S. § 36- 446.03(O)</u>	<u>120</u>	<u>60</u>	<u>60</u>	<u>60</u>	<u>60</u>
<u>Renewal Approval of an Assisted Liv- ing Facility Manager or Caregiver Training Program</u> <u>R4-33-605, R4-33-705, A.R.S. § 36- 446.03(O)</u>	<u>120</u>	<u>60</u>	<u>30</u>	<u>60</u>	<u>30</u>

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R4-33-104. Fees

- A.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change
 12. No change
- B.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
 7. No change
 8. No change
 9. No change
 10. No change
 11. No change
- C.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility manager training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, \$1,000; and
 2. Renewal approval, \$600.
- D.** Under the authority provided at A.R.S. § 36-446.03(B), the Board establishes and shall collect the following fees related to approval of an assisted living facility caregiver training program. The fees are nonrefundable unless A.R.S. § 41-1077 applies:
1. Initial approval, \$1,500; and
 2. Renewal approval, \$1,300.
- ~~**E.**~~ The Board shall ensure that fees established under subsections (A) and (B) this Section are not increased by more than 25 percent above the amounts previously prescribed by the Board.

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

R4-33-601. Definitions

“Owner” means the person responsible for ensuring that an assisted living facility training program complies with this Article.

“Resident” means an individual who lives in an assisted living facility.

“Student cohort” means a group of individuals who begin participation in an assisted living facility training program at the same time.

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

- A.** Organization and administration. The owner of an assisted living facility manager training program shall:
1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours and days, and
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
 2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive training that includes the following information:
 - a. The rights and responsibilities of both the facility and the training program,
 - b. The role and authority of the governing bodies of both the facility and the training program, and
 - c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;
 3. Develop and adhere to written policies and procedures regarding:

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- a. Attendance. Ensure that a student receives at least 40 hours of instruction;
- b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
- c. Reexamination. Inform students that a reexamination:
 - i. Addresses the same competencies examined in the original examination;
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student's record;
- d. Student records. Include the following information:
 - i. Records maintained;
 - ii. Retention period for each record;
 - iii. Location of records;
 - iv. Documents required under subsections (E)(1) and (E)(2), and
 - v. Procedure for accessing records and who is authorized to access records;
- e. Student fees and financial aid, if any;
- f. Withdrawal and dismissal;
- g. Student grievances including a chain of command for disputing a grade;
- h. Admission requirements including any criminal background or drug testing required;
- i. Criteria for training program completion; and
- j. Procedure for documenting that a student has received notice of Board requirements for certification, including the fingerprint clearance card requirement, before the student is enrolled;
- 4. Date each policy and procedure developed under subsection (A)(3), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
- 5. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and classroom location of the training program;
 - c. Number of classroom hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;
- 6. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
 - a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination scores as provided by the examining entity;
 - c. Name and classroom location of the training program;
 - d. Number of classroom hours in the training program;
 - e. Date on which the training program was completed; and
 - f. Board's approval number of the training program; and
- 7. Execute and maintain under subsections (E)(1) and (E)(2) the following documents for each student:
 - a. A skills checklist containing documentation the student achieved competency in the assisted living facility manager skills listed in R4-33-603(C), and
 - b. An evaluation form containing the student's responses to questions about the quality of the classroom experiences provided by the training program.
- B.** Program administrator responsibilities. The owner of an assisted living facility manager training program shall ensure that a program administrator performs the following responsibilities:
 - 1. Supervises and evaluates the training program.
 - 2. Uses only instructors who are qualified under subsection (C), and
 - 3. Makes the written policies and procedures required under subsection (A)(3) available to each student on or before the first day of the training program;
- C.** The owner of an assisted living facility manager training program shall ensure that a program instructor:
 - 1. Is a certified assisted living facility manager who:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least five years;
 - c. Has not been subject to any disciplinary action against the assisted living facility manager certificate during the last five years; and
 - d. Has at least three years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
 - 2. Performs the following responsibilities:

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- a. Plans each learning experience.
 - b. Accomplishes educational goals of the training program and lesson objectives.
 - c. Enforces a grading policy that meets the requirement specified in subsection (A)(3)(b).
 - d. Requires satisfactory performance of all critical elements of each assisted living facility manager skill specified under R4-33-603(C).
 - e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently.
 - f. Is present in the classroom during all instruction.
 - g. Supervises health-care professionals who assist in providing training program instruction, and
 - h. Ensures that a health-care professional who assists in providing training program instruction:
 - i. Is licensed or certified as a health-care professional.
 - ii. Has at least one year of experience in the field of licensure or certification, and
 - iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- D.** Instructional and educational resources. The owner of an assisted living facility manager training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all students and staff:
- 1. Current reference materials related to the level of the curriculum;
 - 2. Equipment, including computers, in good working condition to simulate facility management;
 - 3. Audio-visual equipment and media; and
 - 4. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- E.** The owner of an assisted living facility manager training program shall:
- 1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 - 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken; and
 - e. Copy of the certificate of completion issued to the student as required under subsection (A)(5);
- F.** Examination and evaluation requirements. The owner of an assisted living facility manager training program shall ensure that each student in the training program:
- 1. Takes an examination that covers each of the subjects listed in R4-33-603(C) and passes each examination using the standard specified in subsection (A)(3)(b);
 - 2. Is evaluated and determined to possess the practical skills listed in R4-33-603(C);
 - 3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and
 - 4. Does not take the final examination referenced in subsection (F)(3) more than two times. If a student fails the final examination referenced in subsection (F)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility manager training program again;
- G.** Periodic evaluation. The owner of an assisted living facility manager training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
- 1. An onsite scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-604(D).
 - b. Before renewal of the training program approval as specified under R4-33-605, and
 - c. During a time of correction as specified under R4-33-606(B); and
 - 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board; and
- H.** Notice of change. The owner of an assisted living facility manager training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
- 1. New training program administrator. Name and license number;
 - 2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);
 - 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;

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4. Change in classroom location. Address of new location and description of the new classroom; and
5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

R4-33-603. Curriculum for Assisted Living Facility Manager Training Program

- A.** The owner of an assisted living facility manager training program shall ensure that the training program consists of at least 40 hours of classroom instruction.
- B.** The owner of an assisted living facility manager training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:
 1. Measurable learner-centered objectives.
 2. Outline of the material to be taught.
 3. Time allotted to each unit of instruction, and
 4. Learning activities or reading assignments.
- C.** The owner of an assisted living facility manager training program shall ensure that the training program includes instruction regarding each of the following subjects:
 1. Resident services management. Developing policies and procedures regarding:
 - a. Resident rights and confidentiality;
 - b. Developing, implementing, and updating resident service plans;
 - c. Resident agreements;
 - d. Providing social and recreational services;
 - e. Maintaining resident records and managing documentation systems;
 - f. Managing ancillary services;
 - g. Responding to and reporting specific incidents, accidents, and emergencies involving residents;
 - h. Managing dining services to meet resident needs;
 - i. Preventing abuse, neglect, and exploitation;
 - j. Accepting and retaining residents; and
 - k. Developing systems for managing residents with dementia, Alzheimer's Disease, or difficult behaviors;
 2. Personnel management.
 - a. Complying with federal, state and local laws relating to hiring personnel;
 - b. Developing and implementing systems related to qualifying, orienting, training, and other recurring personnel requirements; and
 - c. Evaluating personnel;
 3. Medication management.
 - a. Developing and evaluating policies and procedures for:
 - i. Medication management including medical restraints; and
 - ii. Non-medication intervention; and
 - b. Developing systems for:
 - i. Receiving and documenting doctors' orders;
 - ii. Ordering, refilling, and storing medications; and
 - iii. Recordkeeping related to receipt and administration of medication; and
 4. Legal management.
 - a. Board-prescribed requirements for certification and re-certification.
 - b. Delegation.
 - c. Ethics.
 - d. Advanced directives and do-not-resuscitate orders.
 - e. Standards of conduct under R4-33-407.
 - f. Department of Health Services compliance and complaint inspections:
 - i. Statement of deficiencies.
 - ii. Plan for correction, and
 - iii. Enforcement action; and
 - g. Risk management and quality improvement;
 5. Financial management.
 - a. Developing and implementing policies, procedures, and practices that comply with:
 - i. State and local laws; and
 - ii. Generally accepted accounting principles regarding accounts receivable, accounts payable, payroll, resident funds, and refunds;
 - b. Developing, implementing, and evaluating facility budgeting including revenues, expenses, capital expenditures, and long-term projections; and
 - c. Maintaining appropriate insurance coverage; and

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6. Physical environment management.
 - a. Complying with federal, state, and local laws regarding:
 - i. Occupational Safety and Health Administration,
 - ii. Americans with Disabilities Act, and
 - iii. Fire and safety requirements for assisted living facilities;
 - b. Preparedness for and prevention of fire, emergencies, and disasters;
 - c. Resident safety and security including evacuation, relocation, and transportation; and
 - d. Daily and preventative maintenance plans for buildings, equipment, and grounds.
 - D. The owner of an assisted living facility manager training program shall ensure that the training program provides a student with at least:
 1. Eight hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(1) through (C)(4), and
 2. Four hours of classroom instruction and skills practice in each of the subjects identified in subsections (C)(5) and (C)(6).
 - E. The owner of an assisted living facility manager training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.
- R4-33-604. Application for Approval of an Assisted Living Facility Manager Training Program**
- A. The owner of an assisted living facility manager training program shall ensure that no training is provided until the program is approved by the Board.
 - B. To obtain approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board an application packet that contains the following:
 1. Name, address, telephone number, and e-mail address of the owner;
 2. Name, address, telephone and fax numbers, and web site of the training program;
 3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
 4. A statement of whether the training program is based within an assisted living facility or other location;
 5. Name, telephone number, and license or certificate number of the program administrator required under R4-33-602(B);
 6. Name, telephone number, and certificate number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
 7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
 8. For all assisted living facilities at which the training program will provide classroom instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and
 - e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
 9. Evidence of compliance with R4-33-602 and R4-33-603, including the following:
 - a. Written training program description, consistent with R4-33-602(A)(1), and an implementation plan that includes timelines;
 - b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-602(D);
 - c. Written curriculum, consistent with R4-33-603(B);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility manager skills, consistent with R4-33-602(A)(7)(a);
 - e. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
 - f. Evidence of completion issued to a student under R4-33-602(A)(5);
 - g. Name of textbook used, author, publication date, and publisher; and
 - h. Copy of written policies and procedures required under R4-33-602(A)(3);
 10. Signature of the owner of the training program; and
 11. The fee prescribed under R4-33-104(C)(1).
 - C. The owner of an assisted living facility manager training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
 - D. After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
 1. If requirements are met, approve the training program for one year; or
 2. If requirements are not met, deny approval of the training program.
 - E. The owner of an assisted living facility manager training program that is denied approval by the Board may request a

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hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-605. Renewal of Approval of an Assisted Living Facility Manager Training Program

- A.** The approval of an assisted living facility manager training program expires one year from the date of approval. If the approval of an assisted living facility manager training program expires, the owner of the training program shall immediately stop all training program activity.
- B.** To renew approval of an assisted living facility manager training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:
1. Name, address, e-mail, and telephone number of the owner;
 2. Name, address, telephone and fax numbers, and web site of the training program;
 3. Name, telephone number, and license number of the program administrator required under R4-33-602(B);
 4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-602(C);
 5. Written training program description, consistent with R4-33-602(A)(1);
 6. Written curriculum, consistent with R4-33-603(B);
 7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided;
 - b. Number of students who completed the training program;
 - c. Results obtained on the Board-approved written and skills examinations for each student, and
 - d. Percentage of students who passed the examinations on the first attempt;
 8. For an assisted living facility at which the training program has started to provide classroom instruction since the training program was last approved, the information required under R4-33-604(B)(8);
 9. Evaluation form required under R4-33-602(A)(7)(b) to enable students to assess the quality of the classroom experience provided by the training program;
 10. Summary of evaluations for each student cohort, required under R4-33-602(E)(1)(c), and measures taken, if any, to improve the training program based on student evaluations;
 11. Evidence of completion issued to a student under R4-33-602(A)(5);
 12. Name of textbook used, author, publication date, and publisher;
 13. Copy of written policies and procedures required under R4-33-602(A)(3);
 14. Signature of the owner of the program; and
 15. The fee prescribed under R4-33-104(C)(2).
- C.** After review of the materials submitted under subsection (B), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides classroom instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
1. Renew approval of a training program that the Board determines complies with R4-33-602 and R4-33-603, or
 2. Issue a notice of deficiency under R4-33-606 to the owner of a training program that the Board determines does not comply with R4-33-602 or R4-33-603.
- G.** The owner of an assisted living facility manager training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-606. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

- A.** Notice of deficiency. If the Board determines that an assisted living facility manager training program does not comply with the requirements in this Article, the Board shall issue a written notice of deficiency to the owner of the training program. The Board shall include the following in the notice of deficiency:
1. Description of each deficiency;
 2. Citation to the requirement in this Article with which the training program is not in compliance; and
 3. The time, to a maximum of three months, allowed by the Board for correction of the deficiencies.
- B.** Correction plan.
1. Within 10 days after service of a notice of deficiency under subsection (A), the owner of the served training program shall submit to the Board a written plan to correct the identified deficiencies;
 2. The Board may conduct onsite or telephonic evaluations during the time for correction to assess progress towards

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compliance:

3. The owner of a training program implementing a correction plan shall notify the Board when all corrections have been made; and
4. After receiving notice under subsection (B)(3) or after the time provided under subsection (A)(3) has expired, the Board shall conduct an onsite evaluation to determine whether all deficiencies listed in the notice under subsection (A) have been corrected.
 - a. If the Board determines that all deficiencies have been corrected, the Board shall renew approval of the training program; or
 - b. If the Board determines that all deficiencies have not been corrected, the Board shall take disciplinary action under subsection (C).

C. Disciplinary action.

1. Under A.R.S. § 36-446.03(P), the Board shall issue a civil money penalty, suspend or revoke approval of an assisted living facility manager training program, or place the training program on probation if, following a hearing, the Board determines that the owner of the assisted living facility caregiver training program:
 - a. Failed to submit a plan of correction to the Board under R4-33-606(B) within 10 days after service of a notice of deficiency;
 - b. Failed to comply with R4-33-602 or R4-33-603 within the time set by the Board under R4-33-606(A)(3) for correction of deficiencies;
 - c. Failed to comply with a federal or state requirement;
 - d. Failed to allow the Board to conduct an evaluation under R4-33-602(G);
 - e. Failed to comply with R4-33-602(H);
 - f. Lent or transferred training program approval to another individual or entity or another training program, including one owned by the same owner;
 - g. Conducted an assisted living facility manager training program before obtaining Board approval;
 - h. Conducted an assisted living facility manager training program after expiration of program approval without submitting an application for renewal under R4-33-605;
 - i. Falsified an application for assisted living facility manager training program approval under R4-33-604 or R4-33-605;
 - j. Violated an order, condition of probation, or stipulation issued by the Board; or
 - k. Failed to respond to a complaint filed with the Board.
2. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.
3. The Board shall include in an order suspending or revoking approval of an assisted living facility manager training program the time and circumstances under which the owner of the suspended or revoked training program may apply again under R4-33-604 for training program approval.

D. Voluntary termination. If the owner of an approved assisted living facility manager training program decides to terminate the training program, the owner shall:

1. Provide written notice of the planned termination to the Board; and
2. Ensure that the training program, including the instructors, is maintained according to this Article until the last student is transferred or completes the training program.

ARTICLE 7. ASSISTED LIVING FACILITY CAREGIVER TRAINING PROGRAMS

R4-33-701. Definitions

- A. The definitions in R4-33-601 apply to this Article.**
- B. "Distance learning" means the use of technology to teach students who may or may not be physically present in a classroom.**
- C. "Skills training" means experiential learning focused on acquiring the ability to provide caregiving services to residents.**

R4-33-702. Minimum Standards for Assisted Living Facility Caregiver Training Program

- A. Organization and administration. The owner of an assisted living facility caregiver training program shall:**
 1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours:
 - i. Number of hours of classroom instruction.
 - ii. Number of hours of skills training, and
 - iii. Number of hours of distance learning, and
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
 2. Develop and adhere to written policies and procedures regarding:
 - a. Attendance. Ensure that a student receives at least 104 hours of instruction;
 - b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
 - c. Reexamination. Inform students that a reexamination:

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- i. Addresses the same competencies examined in the original examination.
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student's record;
 - d. Student records. Include the following information:
 - i. Records maintained.
 - ii. Retention period for each record.
 - iii. Location of records.
 - iv. Documents required under subsections (G)(1) and (G)(2), and
 - v. Procedure for accessing records and who is authorized to access records;
 - e. Student fees and financial aid, if any;
 - f. Withdrawal and dismissal;
 - g. Student grievances including a chain of command for disputing a grade;
 - h. Admission requirements including any criminal background or drug testing required;
 - i. Criteria for training program completion; and
 - j. Procedure for documenting that a student has received notice of the fingerprint clearance card requirement before the student is enrolled;
 - 3. Date each policy and procedure developed under subsection (A)(2), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
 - 4. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and classroom location of the training program;
 - c. Number of classroom, skills training, and distance learning hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;
 - 5. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
 - a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination scores as provided by a Board-approved provider;
 - c. Name and classroom location of the training program;
 - d. Number of classroom hours in the training program;
 - e. Number of distance learning hours in the training program;
 - f. Number of skills training hours in the training program;
 - g. Date on which the training program was completed; and
 - h. Board's approval number of the training program; and
 - 6. Execute and maintain under subsections (G)(1) and (G)(2) the following documents for each student:
 - a. A skills checklist containing documentation the student achieved competency in the assisted living facility caregiver skills listed in R4-33-703(C).
 - b. A copy of the current food-handler's card issued to the student by the county in which the student lives, and
 - c. An evaluation form containing the student's responses to questions about the quality of the instructional experiences provided by the training program.

B. Program administrator responsibilities. The owner of an assisted living facility caregiver training program shall ensure that a program administrator performs the following responsibilities:

 - 1. Supervises and evaluates the training program.
 - 2. Uses only instructors who are qualified under subsection (C), and
 - 3. Makes the written policies and procedures required under subsection (A)(2) available to each student on or before the first day of the training program;

C. The owner of an assisted living facility caregiver training program shall ensure that a program instructor is qualified under subsection (C)(1), (C)(2), or (C)(3):

 - 1. Is a certified assisted living facility manager:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least two years;
 - c. Has not been subject to disciplinary action against the assisted living facility manager certificate during the last two years; and
 - d. Has at least two years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
 - 2. Is a licensed medical professional:

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- a. Holds a license that is in good standing and issued under A.R.S. Title 32, Chapter, 13, 15, 17, or 25;
 - b. Has held the medical professional license referenced in subsection (C)(2)(a) for at least two years;
 - c. Has not been subject to disciplinary action against the medical professional license during the last two years; and
 - d. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor; or
3. Other qualified individual:
 - a. Holds at least a baccalaureate degree in a health-related field from an accredited college or university;
 - b. Has not been subject to disciplinary action against any professional or occupational license or certificate during the last two years; and
 - c. Has at least two years' experience within the last five years in management, operation, or training in assisted living immediately before becoming a training program instructor.
- D.** The owner of an assisted living facility caregiver training program shall ensure that a program instructor performs the following responsibilities:
 1. Plans each learning experience.
 2. Accomplishes educational goals of the training program and lesson objectives.
 3. Enforces a grading policy that meets the requirement specified in subsection (A)(2)(b).
 4. Requires satisfactory performance of all critical elements of each assisted living facility caregiver skill specified under R4-33-703(C).
 5. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently.
 6. Is present in the classroom during all instruction.
 7. Uses a maximum of 26 hours of distance learning.
 8. Supervises health-care professionals who assist in providing training program instruction, and
 9. Ensures that a health-care professional who assists in providing training program instruction:
 - a. Is licensed or certified as a health-care professional.
 - b. Has at least one year of experience in the field of licensure or certification, and
 - c. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.
- E.** Skill training requirements. The owner of an assisted living facility caregiver training program shall:
 1. Provide each student with at least 16 hours of instructor-supervised skills training, and
 2. Ensure that each student develops skill proficiency in the subjects listed in R4-33-703(C).
- F.** Instructional and educational resources. The owner of an assisted living facility caregiver training program shall provide, or provide access to, the following instructional and educational resources adequate to implement the training program for all students and staff:
 1. Current reference materials related to the level of the curriculum;
 2. Equipment in functional condition for simulating resident care, including:
 - a. Patient bed, over-bed table, and nightstand;
 - b. Privacy curtain and call bell;
 - c. Thermometers, stethoscopes, including a teaching stethoscope, blood-pressure cuff, and balance scale;
 - d. Hygiene supplies, elimination equipment, drainage devices, and linens;
 - e. Hand-washing equipment and clean gloves; and
 - f. Wheelchair, gait belt, walker, anti-embolic hose, and cane;
 3. Computer in good working condition;
 4. Audio-visual equipment and media; and
 5. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- G.** Records. The owner of an assisted living facility caregiver training program shall:
 1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken;
 - e. Documentation from the program instructor indicating the:
 - i. Number of skills training hours completed by the student.

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- ii. Student performance during the skills training; and
 - iii. Verification of distance learning hours completed by the student; and
 - f. Copy of the certificate of completion issued to the student as required under subsection (A)(4);
- H.** Examination and evaluation requirements. The owner of an assisted living facility caregiver training program shall ensure that each student in the training program:
 - 1. Takes an examination that covers each of the subjects listed in R4-33-703(C) and passes each examination using the standard specified in subsection (A)(2)(b);
 - 2. Is evaluated and determined to possess the practical skills listed in R4-33-703(C);
 - 3. Passes, using the standard specified in subsection (A)(2)(b), a final examination approved by the Board and given by a Board-approved provider; and
 - 4. Does not take the final examination referenced in subsection (H)(3) more than two times. If a student fails the final examination referenced in subsection (H)(3) two times, the student is able to obtain evidence of completion only by taking the assisted living facility caregiver training program again;
- I.** Periodic evaluation. The owner of an assisted living facility caregiver training program shall allow a representative of the Board or a state agency designated by the Board to conduct:
 - 1. A scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-704(D);
 - b. Before renewal of the training program approval as specified under R4-33-705(C), and
 - c. During a time of correction as specified under R4-33-706(B); and
 - 2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board;
- J.** Notice of change. The owner of an assisted living facility caregiver training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:
 - 1. New training program administrator. Name and license number;
 - 2. New instructor. Name, license number, and evidence of being qualified under subsection (C);
 - 3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
 - 4. Change in classroom location. Address of new location, if applicable, and description of the new classroom; and
 - 5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.
- K.** Partial waiver of training program hours. The owner of an assisted living facility caregiver training program:
 - 1. May waive the following training program hours for a student who, at the time of admission, is certified as a nursing assistant under A.R.S. Title 32, Chapter 15, and in good standing:
 - a. Hours of classroom instruction listed in subsections R4-33-703(C)(2) through (C)(4) and (C)(6) through (C)(13), and
 - b. Sixteen hours of skills training; and
 - 2. Shall ensure that a student to whom a waiver is provided under this subsection completes:
 - a. Hours of classroom instruction listed in subsections R4-33-703(C)(1), (5), and (14); and
 - b. Examination and evaluation requirements in subsection (H).

R4-33-703. Curriculum for Assisted Living Facility Caregiver Training Program

- A.** The owner of an assisted living facility caregiver training program shall ensure that the training program consists of at least 104 hours of instruction including:
 - 1. Eighty-eight hours of classroom instruction, of which a maximum of 26 hours may be provided by distance learning, and
 - 2. Sixteen hours of instructor-supervised skills training.
- B.** The owner of an assisted living facility caregiver training program shall provide a written curriculum plan to each student that includes overall educational goals and for each required subject:
 - 1. Measurable learner-centered objectives.
 - 2. Outline of the material to be taught.
 - 3. Time allotted to each unit of instruction, and
 - 4. Learning activities or reading assignments.
- C.** The owner of an assisted living facility caregiver training program shall ensure that the training program includes classroom instruction and skills training regarding each of the following subjects:
 - 1. Orientation to and overview of the assisted living facility caregiver training program (at least two classroom hours).
 - a. Levels of care within an assisted living facility, and
 - b. Impact of each level of care on residents;
 - 2. Legal and ethical issues and resident rights (at least five classroom hours).
 - a. Confidentiality (HIPPA);

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- b. Ethical principles;
- c. Resident rights specified in R9-10-710;
- d. Abuse, neglect, and exploitation;
- e. Mandatory reporting; and
- f. Do-not-resuscitate order and advanced directives;
- 3. Communication and interpersonal skills (at least four classroom hours).
 - a. Components of effective communication.
 - b. Styles of communication.
 - c. Attitude in communication.
 - d. Barriers to effective communication:
 - i. Culture.
 - ii. Language, and
 - iii. Physical and mental disabilities, and
 - e. Techniques of communication;
- 4. Job management skills (at least four classroom hours).
 - a. Stress management, and
 - b. Time management;
- 5. Service plans (at least four classroom hours). Developing, using, and maintaining resident service plans;
- 6. Infection control (at least five classroom hours).
 - a. Common types of infectious diseases.
 - b. Preventing infection.
 - c. Controlling infection:
 - i. Washing hands.
 - ii. Using gloves, and
 - iii. Disposing of sharps and other waste;
- 7. Nutrition and food preparation (at least six classroom hours).
 - a. Basic nutrition;
 - b. Menu planning and posting;
 - c. Procuring, handling, and storing food safely; and
 - d. Special diets;
- 8. Fire, safety, and emergency procedures (at least five classroom hours).
 - a. Emergency planning.
 - b. Medical emergencies.
 - c. Environmental emergencies.
 - d. Fire safety.
 - e. Fire drills and evacuations, and
 - f. Fire-code requirements;
- 9. Home environment and maintenance (at least five classroom hours).
 - a. Housekeeping.
 - b. Laundry, and
 - c. Physical plant;
- 10. Basic caregiver skills (at least 12 classroom hours).
 - a. Taking vital signs and measuring height and weight;
 - b. Maintaining a resident's environment;
 - c. Observing and reporting pain;
 - d. Assisting with diagnostic tests;
 - e. Providing assistance to residents with drains and tubes;
 - f. Recognizing and reporting abnormal changes to a supervisor;
 - g. Applying clean bandages;
 - h. Providing peri-operative care;
 - i. Assisting ambulation of residents including transferring and using assistive devices;
 - j. Bathing, caring for skin, and dressing;
 - k. Caring for teeth and dentures;
 - l. Shampooing and caring for hair;
 - m. Caring for nails;
 - n. Toileting, caring for perineum, and caring for ostomy;
 - o. Feeding and hydration including proper feeding techniques and use of assistive devices in feeding;
 - p. Preventing pressure sores; and
 - q. Maintaining and treating skin;

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11. Mental health and social service needs (at least seven classroom hours).
 - a. Modifying the caregiver's behavior in response to resident behavior.
 - b. Understanding the developmental tasks associated with the aging process.
 - c. Responding to resident behavior.
 - d. Promoting resident dignity.
 - e. Providing culturally sensitive care.
 - f. Caring for the dying resident, and
 - g. Interacting with the resident's family;
12. Care of the cognitively impaired resident (at least eight classroom hours).
 - a. Anticipating and addressing the needs and behaviors of residents with dementia or Alzheimer's disease.
 - b. Communicating with cognitively impaired residents.
 - c. Understanding the behavior of cognitively impaired residents, and
 - d. Reducing the effects of cognitive impairment;
13. Skills for basic restorative services (at least five classroom hours).
 - a. Understanding body mechanics;
 - b. Assisting resident self-care;
 - c. Using assistive devices for transferring, walking, eating, and dressing;
 - d. Assisting with range-of-motion exercises;
 - e. Providing bowel and bladder training;
 - f. Assisting with care for and use of prosthetic and orthotic devices; and
 - g. Facilitating family and group activities; and
14. Medication management (at least 16 classroom hours).
 - a. Determining whether a resident needs assistance with medication administration and if so, the nature of the assistance;
 - b. Assisting a resident to self-administer medication;
 - c. Observing, documenting, and reporting changes in resident condition before and after medication is administered;
 - d. Knowing the rights of a resident regarding medication administration;
 - e. Knowing classifications of and responses to medications;
 - f. Taking, reading, and implementing a physician's medication and treatment orders;
 - g. Storing medication properly and securely;
 - h. Documenting medication and treatment services;
 - i. Maintaining records of medication and treatment services;
 - j. Using medication organizers properly;
 - k. Storing and documenting use of narcotic drugs and controlled substances;
 - l. Understanding how metabolism and physical conditions affect medication absorption;
 - m. Knowing the proper administration of all forms of medication;
 - n. Using drug-reference guides (Physician's Desk Reference); and
 - o. Preventing, identifying, documenting, reporting, and responding to medication errors.
- D.** The owner of an assisted living facility caregiver training program shall ensure that the training program:
 1. Provides a student with at least the number of classroom hours specified in subsection (C);
 2. Provides no more than 26 of the classroom hours specified in subsections (C)(1), (C)(4), (C)(5), (C)(7), (C)(8), and (C)(9) by distance learning; and
 3. Provides a student with at least the number of skills training hours specified in subsection (A)(2).
- E.** The owner of an assisted living facility caregiver training program shall ensure that the training program uses textbooks that are relevant to the subjects being taught and have been published within the last five years.
- F.** The owner of an assisted living facility caregiver training program shall ensure that any distance learning provided uses materials that are relevant to the subjects being taught and have been produced within the last five years.

R4-33-704. Application for Approval of an Assisted Living Facility Caregiver Training Program

- A.** The owner of an assisted living facility caregiver training program shall ensure that no training is provided until the program is approved by the Board.
- B.** To obtain approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board an application packet that contains the following:
 1. Name, address, telephone number, and e-mail address of the owner;
 2. Name, address, telephone and fax numbers, and web site of the training program;
 3. Form of business organization under which the training program is operated and a copy of the establishing documents and organizational chart;
 4. A statement of whether the training program is based within an assisted living facility or other location;
 5. Name, telephone number, and license or certificate number of the program administrator required under R4-33-

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702(B):

6. Name, telephone number, and certificate number of each program instructor and evidence that each program instructor is qualified under R4-33-702(C);
 7. A statement of whether the training program is accredited and if so, name of the accrediting body and date of last review;
 8. For all assisted living facilities at which the training program will provide instruction:
 - a. Name, address, and telephone number of the assisted living facility;
 - b. Name and telephone number of a contact person at the assisted living facility;
 - c. License number of the assisted living facility issued by the Department of Health Services;
 - d. A statement of whether the license of the assisted living facility is in good standing; and
 - e. Date and results of the most recent compliance inspection conducted by the Department of Health Services;
 9. Evidence of compliance with R4-33-702 and R4-33-703, including the following:
 - a. Written training program description, consistent with R4-33-702(A)(1), and an implementation plan that includes timelines;
 - b. Description of classroom facilities, equipment, and instructional tools available, consistent with R4-33-702(F);
 - c. Written curriculum, consistent with R4-33-703(C);
 - d. Skills checklist used to verify whether a student has acquired the necessary assisted living facility caregiver skills, consistent with R4-33-702(A)(6)(a);
 - e. Evaluation form required under R4-33-702(A)(6)(c) to enable students to assess the quality of the instructional experience provided by the training program;
 - f. Evidence of completion issued to a student under R4-33-702(A)(4);
 - g. Name of textbook used, author, publication date, and publisher;
 - h. Name of any distance learning materials used, producer of the material, and date produced; and
 - i. Copy of written policies and procedures required under R4-33-702(A)(2);
 10. Signature of the owner of the training program; and
 11. The fee prescribed under R4-33-104(D)(1).
- C.** The owner of an assisted living facility caregiver training program shall ensure that the application materials submitted under subsection (B) are printed on only one side of white, letter-sized paper, and are not bound in any manner.
- D.** After review of the materials submitted under subsection (B), the Board shall schedule an onsite evaluation of the training program and take one of the following actions:
1. If requirements are met, approve the training program for one year; or
 2. If requirements are not met, deny approval of the training program.
- E.** The owner of an assisted living facility caregiver training program that is denied approval by the Board may request a hearing regarding the denial by filing a written request with the Board within 30 days after service of the Board's order denying approval of the training program. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-705. Renewal of Approval of an Assisted Living Facility Caregiver Training Program

- A.** The approval of an assisted living facility caregiver training program expires one year from the date of approval. If the approval of an assisted living facility caregiver training program expires, the owner of the training program shall immediately stop all training program activity.
- B.** To renew approval of an assisted living facility caregiver training program, the owner of the training program shall submit to the Board, no fewer than 60 and no more than 120 days before expiration of the current approval, an application packet that contains the following:
1. Name, address, telephone number, and e-mail address of the owner;
 2. Name, address, telephone and fax numbers, and web site of the training program;
 3. Name, telephone number, and license number of the program administrator required under R4-33-702(B);
 4. Name, telephone number, and license number of each program instructor and evidence that each program instructor is qualified under R4-33-702(C);
 5. Written training program description, consistent with R4-33-702(A)(1);
 6. Written curriculum, consistent with R4-33-703(C);
 7. Since the time the training program was last approved:
 - a. Number of student-cohort classes to which training was provided,
 - b. Number of students who completed the training program,
 - c. Results obtained on the Board-approved written and skills examinations for each student, and
 - d. Percentage of students who passed the examinations on the first attempt;
 8. For an assisted living facility at which the training program has started to provide instruction since the training program was last approved, the information required under R4-33-704(B)(8);
 9. Evaluation form required under R4-33-702(A)(6)(c) to enable students to assess the quality of the instructional experience provided by the training program;
 10. Summary of evaluations for each student cohort, required under R4-33-702(G)(1)(c), and measures taken, if any, to

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improve the training program based on student evaluations:

11. Evidence of completion issued to a student under R4-33-702(A)(4);
 12. Name of textbook used, author, publication date, and publisher;
 13. Name of any distance learning materials used, producer of the material, and date produced;
 14. Copy of written policies and procedures required under R4-33-702(A)(2);
 15. Signature of the owner of the training program; and
 16. The fee prescribed under R4-33-104(D)(2).
- C.** After review of the materials submitted under subsection (B), the Board shall ensure that the training program is evaluated at either an onsite or telephonic meeting. The program owner shall ensure that the program owner, program administrator, and all instructors are available to participate in the evaluation meeting.
- D.** The Board shall ensure that each training program receives an onsite evaluation at least every four years. An onsite evaluation includes visiting each assisted living facility at which the training program provides instruction.
- E.** If the Board approves a training program following an onsite evaluation, no deficiencies were identified during the onsite evaluation, and no complaints are filed with the Board, the Board shall evaluate the training program under subsection (C) using a telephonic meeting for at least two years.
- F.** After conducting the evaluation required under subsection (C), the Board shall:
1. Renew approval of a training program that the Board determines complies with R4-33-702 and R4-33-703, or
 2. Issue a notice of deficiency under R4-33-706 to the owner of a training program that the Board determines does not comply with R4-33-702 or R4-33-703.
- G.** The owner of an assisted living facility training program that is issued a notice of deficiency by the Board under subsection (F)(2) may request a hearing regarding the deficiency notice by filing a written request with the Board within 30 days after service of the Board's order. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.

R4-33-706. Notice of Deficiency; Correction Plan; Disciplinary Action; Voluntary Termination

- A.** Notice of deficiency. If the Board determines that an assisted living facility caregiver training program does not comply with the requirements in this Article, the Board shall issue a written notice of deficiency to the owner of the training program. The Board shall include the following in the notice of deficiency:
1. Description of each deficiency;
 2. Citation to the requirement in this Article with which the training program is not in compliance; and
 3. The time, to a maximum of three months, allowed by the Board for correction of the deficiencies.
- B.** Correction plan.
1. Within 10 days after service of a notice of deficiency under subsection (A), the owner of the served training program shall submit to the Board a written plan to correct the identified deficiencies;
 2. The Board may conduct onsite or telephonic evaluations during the time for correction to assess progress towards compliance;
 3. The owner of a training program implementing a correction plan shall notify the Board when all corrections have been made; and
 4. After receiving notice under subsection (B)(3) or after the time provided under subsection (A)(3) has expired, the Board shall conduct an onsite evaluation to determine whether all deficiencies listed in the notice under subsection (A) have been corrected.
 - a. If the Board determines that all deficiencies have been corrected, the Board shall renew approval of the training program; or
 - b. If the Board determines that all deficiencies have not been corrected, the Board shall take disciplinary action under subsection (C).
- C.** Disciplinary action.
1. Under A.R.S. § 36-446.03(P), the Board shall issue a civil money penalty, suspend or revoke approval of an assisted living facility caregiver training program, or place the training program on probation if, following a hearing, the Board determines that the owner of the assisted living facility caregiver training program:
 - a. Failed to submit a plan of correction to the Board under R4-33-706(B) within 10 days after service of a notice of deficiency;
 - b. Failed to comply with R4-33-702 or R4-33-703 within the time set by the Board under R4-33-706(A)(3) for correction of deficiencies;
 - c. Failed to comply with a federal or state requirement;
 - d. Failed to allow the Board to conduct an evaluation under R4-33-702(I);
 - e. Failed to comply with R4-33-702(J);
 - f. Lent or transferred training program approval to another individual or entity or another training program, including one owned by the same owner;
 - g. Conducted an assisted living facility caregiver training program before obtaining Board approval;
 - h. Conducted an assisted living facility caregiver training program after expiration of program approval without timely submitting an application for renewal under R4-33-705;

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- i. Falsified an application for assisted living facility caregiver training program approval under R4-33-704 or R4-33-705;
- j. Violated an order, condition of probation, or stipulation issued by the Board; or
- k. Failed to respond to a complaint filed with the Board.
2. The Board shall conduct hearings under A.R.S. Title 41, Chapter 6, Article 10.
3. The Board shall include in an order suspending or revoking approval of an assisted living facility caregiver training program the time and circumstances under which the owner of the suspended or revoked training program may apply again under R4-33-704 for training program approval.
- D. Voluntary termination. If the owner of an approved assisted living facility caregiver training program decides to terminate the training program, the owner shall:
 1. Provide written notice of the planned termination to the Board; and
 2. Ensure that the training program, including the instructors, is maintained according to this Article until the last student is transferred or completes the training program.

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 12. DEPARTMENT OF ECONOMIC SECURITY
CASH ASSISTANCE PROGRAM

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1663.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 18, 2012.

[R13-96]

PREAMBLE

- | | |
|---|---------------------------------|
| 1. <u>Articles, Parts, and Sections Affected (as applicable)</u> | <u>Rulemaking Action</u> |
| Article 14 | New Article |
| R6-12-1401 | New Section |
| R6-12-1402 | New Section |
| R6-12-1403 | New Section |
| R6-12-1404 | New Section |
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. §§ 41-1954(A)(3) and 46-134(A)(12)
Implementing statute: A.R.S. § 46-298
- 3. The effective date of the rules:**
August 4, 2013
- a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
Not applicable
- b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
Not applicable
- 4. Citations to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
Notice of Rulemaking Docket Opening: 19 A.A.R. 50, January 11, 2013
Notice of Proposed Rulemaking: 19 A.A.R. 278, February 22, 2013
- 5. The agency's contact person who can answer questions about the rulemaking:**
Name: Beth Broeker
Address: Department of Economic Security
P.O. Box 6123, Site Code 837A

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Phoenix, AZ 85005

or

Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007

Telephone: (602) 542-6555
Fax: (602) 542-6000
E-mail: bbroeker@azdes.gov
Web site: http://www.azdes.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

This rulemaking will add rules pertaining to the Cash Assistance Grant Diversion program, to comply with Laws 2007, Ch. 120, § 1. The Grant Diversion cash benefit is a nonrecurring short term benefit intended to provide financial assistance to meet the critical needs of the assistance unit for a three calendar month period, which includes the initial month of Grant Diversion eligibility and the two months immediately following, in order for an adult assistance unit member to secure employment and support for the assistance unit. A.R.S. § 46-298 requires the Department to offer, and a Cash Assistance applicant may accept, the option of receiving a lump sum Grant Diversion cash benefit as an alternative to a monthly Cash Assistance benefit when all of the eligibility criteria in this Article are satisfied.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The Department of Economic Security ("Department") currently administers the Grant Diversion program and the proposed rulemaking does not alter the ongoing operations of the program. The rulemaking is for the purpose of updating the rules to reflect current legislation and policy. For the 12-month period of July 1, 2011, through June 30, 2012, the Department of Economic Security issued \$12,880,000 to 16,599 eligible TANF Cash Assistance applicants who chose the Grant Diversion option and were diverted from long-term assistance. The monthly average number of Grant Diversion option approvals was 1,383 and the average payment per case was \$776. The Department's average monthly expenditure for the Grant Diversion option was \$1,073,300. The rule has minimal impact to small business and consumers, because it explains current procedures in the Grant Diversion component of the Cash Assistance program. All administrative costs and client benefit costs are paid from the TANF Block Grant.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The Department has not made any substantial changes since the Notice of Proposed Rulemaking was published on February 22, 2013, other than minor clarifying typographical and formatting changes that were made at the recommendation of Council staff.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

None

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

These rules do not require a permit.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Although federal funding is provided for the program under Title IV of the Social Security Act, the Cash Assistance Grant Diversion program is operated under state law.

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- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 12. DEPARTMENT OF ECONOMIC SECURITY
CASH ASSISTANCE PROGRAM

ARTICLE 14. GRANT DIVERSION

Section

- R6-12-1401. Definitions
R6-12-1402. Eligibility for Grant Diversion
R6-12-1403. Amount of the Grant Diversion Cash Benefit
R6-12-1404. Treatment of Changes During the Grant Diversion Payment Period

ARTICLE 14. GRANT DIVERSION

R6-12-1401. Definitions

"Grant Diversion Payment Period" means the time period that begins the first day of the first eligible month and ends the last day of the third eligible month.

R6-12-1402. Eligibility for Grant Diversion

The Department shall offer a Cash Assistance applicant the option of receiving a lump sum Grant Diversion cash benefit when the applicant satisfies all of the following eligibility criteria:

1. The assistance unit includes an adult parent or non-parent caretaker relative;
2. The assistance unit meets all CA financial and non-financial eligibility criteria, except that the adult parent or non-parent caretaker relative is exempt from the following:
 - a. The child support requirements in R6-12-311;
 - b. The Jobs program participation requirements in R6-12-313;
 - c. The Personal Responsibility Agreement in R6-12-302; and
 - d. The TPEP employment and education requirements in R6-12-606;
3. The assistance unit is eligible for a CA cash benefit of at least one dollar in either the month of application or either of the two months following the month of application;
4. An adult assistance unit member is immediately available for full-time employment and the adult satisfies at least one of the following requirements:
 - a. Was employed in the month the application was received or in at least one of the 12 months preceding the month that the application was received;
 - b. Has a verified offer of full-time employment that will begin within the three month Grant Diversion payment period; or
 - c. Has successfully completed an educational, vocational, or job training program in the month the application was received or in one of the six months preceding the month that the application was received;
5. An adult parent or non-parent caretaker relative in the assistance unit completes and signs the Grant Diversion Applicant Agreement form, which includes the adult's agreement that the short term Grant Diversion cash benefit shall assist and support the adult in securing full-time employment within 90 days of the application date in order to enable the assistance unit to become self-sufficient;
6. The assistance unit has not received a Grant Diversion cash benefit in the 12 months preceding the month that the application was received; and
7. The assistance unit is not currently being sanctioned under R6-12-316.

R6-12-1403. Amount of the Grant Diversion Cash Benefit

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The Department shall provide an eligible assistance unit a nonrecurring lump sum cash benefit in an amount equal to three times the maximum monthly cash benefit for which the assistance unit would be eligible in the Cash Assistance program, based on zero countable income. The Department shall provide the cash benefit to financially assist an adult assistance unit member in securing full-time employment within the three month Grant Diversion payment period.

R6-12-1404. Treatment of Changes During the Grant Diversion Payment Period

- A.** The Department shall exempt the assistance unit from the change reporting requirements in R6-12-901 during the three month Grant Diversion payment period.
- B.** When the Department receives a request to add a member to the assistance unit during the three month Grant Diversion payment period, the Department shall comply with subsections (B)(1) through (B)(3).
1. The Department shall redetermine eligibility including the added member. The Department shall add the new member, effective the date the request is received, only when the assistance unit remains eligible.
 2. When the assistance unit remains eligible, the Department shall add the new member, effective the date the Department receives the request to add the member, and recalculate the assistance unit's Grant Diversion benefit amount. The Department shall issue the assistance unit a supplemental payment when the amount of the recalculated cash benefit amount exceeds the amount of the cash benefit that was issued to the assistance unit. The supplemental payment shall be a prorated amount from the date the Department received the request to add the member through the end of the three-month Grant diversion payment period.
 3. When the recalculated Grant Diversion cash benefit amount is less than the cash benefit that was issued to the assistance unit, the Department shall not add the member to the assistance unit and shall not write an overpayment.

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 1663.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 13, 2012.

[R13-97]

PREAMBLE

<u>1. Articles, Parts, or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R19-3-501	Amend
R19-3-503	Amend
R19-3-505	Amend
R19-3-506	Amend
R19-3-508	Amend
R19-3-509	Amend
R19-3-511	Amend
R19-3-514	Amend
R19-3-517	Amend
R19-3-518	Amend
R19-3-520	Amend
R19-3-521	Amend
R19-3-523	Amend
R19-3-524	Amend
R19-3-525	Amend
R19-3-528	Amend
R19-3-529	Amend
R19-3-530	Amend
R19-3-531	Amend
R19-3-533	Amend
R19-3-534	Amend
R19-3-535	Amend
R19-3-537	Amend
R19-3-538	Amend
R19-3-539	Amend
R19-3-540	Amend
R19-3-544	Amend

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R19-3-545	Amend
R19-3-547	Renumber
R19-3-547	New Section
R19-3-548	Renumber
R19-3-548	New Section
R19-3-549	Renumber
R19-3-549	New Section
R19-3-550	Renumber
R19-3-550	Amend
R19-3-551	Renumber
R19-3-552	Renumber
R19-3-553	Renumber
R19-3-553	Amend
R19-3-554	Renumber
R19-3-554	Amend
R19-3-555	Renumber
R19-3-555	Amend
R19-3-556	Renumber
R19-3-556	Amend
R19-3-557	Renumber
R19-3-557	Amend
R19-3-558	Repeal
R19-3-558	New Section
R19-3-559	Renumber
R19-3-559	New Section
R19-3-560	Renumber
R19-3-560	New Section
R19-3-561	Repeal
R19-3-561	Renumber
R19-3-561	Amend
R19-3-562	Renumber
R19-3-562	New Section
R19-3-563	New Section
R19-3-564	Renumber
R19-3-565	Renumber
R19-3-565	Amend
R19-3-566	Renumber
R19-3-566	Amend
R19-3-567	Renumber
R19-3-568	Renumber
R19-3-568	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 5-554(B)

Implementing statutes: A.R.S. §§ 5-559, 41-2501(F)

3. The effective date of the rules:

August 4, 2013

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 19 A.A.R. 51, January 11, 2013

Notice of Proposed Rulemaking: 19 A.A.R. 176, February 8, 2013

5. The agency's contact person who can answer questions about the rulemaking:

Name: Jeff Hatch-Miller, Executive Director

Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034

Telephone: (480) 921-4505

Fax: (480) 921-4488

E-mail: JHatch-Miller@azlottery.gov

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or

Name: Pam DiNunzio
Address: Arizona State Lottery
4740 E. University Drive
Phoenix, AZ 85034
Telephone: (480) 921-4489
Fax: (480) 921-4488
E-mail: pdinunzio@azlottery.gov

6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

The Lottery's Procurement rules establish the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets and related materials. The Lottery is amending these rules to remove outdated terminology and procedures, clarify existing language and procedures, and add new language as necessary to respond to issues outlined in the Lottery's 2011 five-year-review report. Amendments have also been made to conform to recent state procurement rule changes recently approved by Council and effective in January 2013. A.R.S. § 41-2501(F) requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, or related materials.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

1. Identification of the rulemaking.

The rules for Article 5, Procurements, prescribe procurement policies and procedures relating to the design and operation of the Lottery or the purchase of Lottery equipment, tickets, and related materials. These rules govern the Lottery's procurement processes and provide open access to procurement opportunities. The rulemaking clarifies existing language and procedures, adds new sections to improve understanding, and also makes changes that conform to recently approved amendments to the Arizona Procurement Code. This rulemaking does not change the Lottery's procurement authority. The Governor's Office approved an exception from the rulemaking moratorium on December 13, 2012.

Conduct and frequency of occurrence: There is no specific conduct this rulemaking is designed to change.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking.

The Lottery anticipates this rulemaking will primarily impact the agency and businesses supplying products or services to the Lottery.

3. Cost-benefit Analysis:

a. Probable costs and benefits to the implementing agency and other agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rules.

A.R.S. § 41-2501(F) exempts the Lottery from provisions of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. A.R.S. § 41-2501(F) also requires the Lottery director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for these types of procurements. The rulemaking benefits the Lottery by maintaining an efficient procurement process, reducing the potential for protests and appeals, and improving rule clarity and ease of use.

The Lottery employs one full-time Procurement Officer. Costs to the Lottery related to this rulemaking include time spent by procurement staff to process purchases and secure contracts for the agency, in addition to the cost of the procurement itself. These costs are included in the agency's annual appropriation and are part of normal operating expenses. In FY12, total expenditures for all procurements were \$34.4 million, of which approximately \$32 million were awarded under the Lottery procurement rules. The rule amendments are primarily administrative in nature and the Lottery does not anticipate any additional costs to the agency or procurement functions as a result of this rulemaking.

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The agency has only had one procurement appeal within the last five years. This appeal involved the Lottery's procurement for advertising services and was not completely unexpected due to the multi-million dollar value of the contract. The procurement officer's decision was upheld by the State Procurement Office.

Impact on Other Agencies/FTE Requirements: The rules have no identifiable impact on other agencies. The Lottery does not require any additional full-time employees; existing staff resources will be used to implement and enforce the proposed rules.

b. Probable costs and benefits to political subdivisions of this state directly affected by the rulemaking.

This rulemaking will not have any identifiable impact on political subdivisions of the state.

c. Probable costs and benefits to businesses directly affected by the rulemaking.

Businesses impacted by these rules are vendors supplying products or services to the Lottery. The impact on these businesses, including small businesses, should be positive. The rules provide for competition, consistency, and equal treatment with respect to procurement procedures. Improved organization, presentation, and clarity should provide better understanding and ease of use as compared to the existing rules. Consistent with state procurement amendments, new provisions have been added that address conflict of interest situations, and provide prospective suppliers with further recourse concerning procurement stay requests. These provisions protect potential suppliers. Businesses will also benefit from consistency between Lottery procurement rules and revised state procurement rules.

Costs to businesses include any operational expenses necessary to comply with procurement procedures, in addition to the cost of providing supplies or services to the Lottery. These operational expenses are a cost of conducting business and are presumed to have been reflected in vendor pricing.

4. Probable impact on private and public employment.

This rulemaking will not have any identifiable impact on private and public employment.

5. Probable impact of the rulemaking on small business.

a. Identification of the small businesses subject to the rulemaking.

Small businesses impacted by these rules are also vendors supplying products or services to the Lottery. The impact on small businesses should be positive. These businesses will benefit from procurements specifically targeted to small businesses, consistent with state procurement rules. Except in specific instances, contracts must be awarded to a small business. The proposed rulemaking does not change this provision, and small businesses should continue to benefit from more open access to contracting opportunities. In FY12, small and minority-owned businesses accounted for about \$14 million of expended funds. Small businesses will also benefit from consistency between Lottery procurement rules and revised state procurement rules.

b. Administrative and other costs required for compliance with the rulemaking.

Any administrative costs incurred to comply with procurement procedures will apply to all businesses, including small businesses.

c. A description of methods that may be used to reduce the impact on small businesses.

Not applicable to this rulemaking. As stated above, the impact on small businesses should be a positive. Requests for quotation must include small businesses, and unless specific exceptions apply, the contract must be awarded to a small business.

6. Probable cost and benefit to private persons and consumers who are directly affected by the rulemaking.

There are no identifiable costs to consumers or the general public associated with the adoption of these rules. Private persons and consumers will benefit from greater efficiency in the procurement process and the agency's ability to secure the best value for the state.

7. Probable effect on state revenues.

This rulemaking should not have any immediate measurable impact on state revenues or expenses. However, effective procurement procedures will help ensure the lowest cost to the state when purchasing goods and services, with an anticipated long-term impact of reducing costs.

8. Less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

The Lottery is unaware of any other less intrusive or less costly methods for achieving the purpose of the rulemaking. The Lottery does not require additional funding or personnel resources to implement the amended rules and is required by A.R.S. § 41-2501(F) to adopt rules that are consistent with the policies and procedures of the Arizona Procurement Code. Procurement procedures are designed to ensure fairness to vendors while providing the best value to the Lottery and the state.

9. Description of any data on which the rule is based.

Not applicable to this rulemaking.

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10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

Grammatical, technical, and clarifying changes were made at the request of Governor's Regulatory Review Council staff. The proposed rulemaking included a technical amendment to R19-3-532(B)(1) where the semi-colon was replaced with a comma. The punctuation was actually correct in the original format, and because that was the only amendment to the section, R19-3-532 was removed from the final rulemaking. The Lottery also made minor changes to the economic impact statement to improve clarity and understandability. There are no substantive changes between the proposed rules and the final rules.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No oral or written comments were received regarding the rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The rules do not require a permit or other agency authorization.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no corresponding federal law that is applicable to the subject matter. The rules are based on state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION

ARTICLE 5. PROCUREMENTS

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~~R19-3-559~~-~~R19-3-566~~. Appeals and Reports to the Director Regarding Contract Claims
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ARTICLE 5. PROCUREMENTS

R19-3-501. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidary relationship, or persons that are similarly affiliated.
2. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
- ~~1-3.~~ "Best interests of the Lottery" means advantageous to the Lottery.
- ~~2-4.~~ "Bid" means an offer in response to solicitation.
- ~~3-5.~~ "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
- ~~4-6.~~ "Change order" means a document, signed by the Director, which directs the contractor to make a change that the contract authorizes the Director to order.
- ~~5-7.~~ "Competitive range" means the range determined on the basis of the criteria stated in the solicitation and shall include all offers that have a reasonable chance of being selected for award. is a range determined by the procurement officer on the basis of the criteria stated in the solicitation and an initial review of the proposals submitted. Those proposals that are susceptible for award after the initial review of all original proposals in accordance with the evaluation criteria and a comparison and ranking of original proposals shall be in the competitive range. Those proposals that have no reasonable chance for award when compared on a relative basis with more highly ranked proposals will not be in the competitive range. Proposals to be considered within the competitive range must, at a minimum, demonstrate the following:

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- a. Affirmative compliance with mandatory requirements designated in the solicitation.
- b. An ability to deliver goods or services on terms advantageous to the Lottery sufficient to be entitled to continue in the competition.
- c. That the proposal is technically acceptable as submitted.
- 6-8. "Contract" means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
- 7-9. "Contract amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
- 8-10. "Contractor" means a person who has a contract with the Lottery.
9. ~~"Cost analysis" means the evaluation of cost data.~~
- 10-11. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
- 11-12. "Cost-plus-a-percentage-of-cost-contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
- 12-13. ~~"Cost reimbursement~~ Cost reimbursement contract" means a contract under which a contractor is reimbursed for costs that are reasonable, allowable, and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
- 13-14. ~~"Days Day"~~ means a calendar ~~days day~~ and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
- 14-15. "Defective data" means data that is inaccurate, incomplete, or outdated.
- 15-16. "Director" means the Executive Director of the State Lottery.
- 16-17. "Discussions" means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
- 17-18. "Filed" means delivered to the ~~office of the Director~~ Arizona Lottery, 4740 E. University Dr., Phoenix, AZ 85034. A time/date stamp affixed to a document by the ~~office of the Director~~ procurement officer or the procurement officer's delegate when the document is delivered determines the time of filing.
- 18-19. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
19. ~~"Incremental award" means a grant of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.~~
20. "Interested party" means an offeror or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
21. "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
22. "Minor informality" means any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
23. "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
24. "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
25. "Negotiation" means an exchange or series of exchanges between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
26. "Offer" means a response to a solicitation.
27. "Offeror" means a person ~~that~~ who responds to a solicitation.
28. "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
29. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
30. "Procurement" means all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.
31. "Procurement file" means the official records file of the ~~Director whether located in the office of the Director or at a public procurement unit~~ Lottery. The procurement file shall include (electronic or paper) the following:
 - a. List of notified vendors;

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- b. Final solicitation;
 - c. Solicitation amendments;
 - d. Bids and offers;
 - e. Final proposal revisions;
 - f. Discussions;
 - g. Clarifications;
 - h. Final evaluation reports; and
 - i. Additional information, if requested by the procurement officer.
- ~~32.~~ ~~"Procurement request" means the document that initiates a procurement.~~
- ~~33-32.~~ "Proposal" means an offer submitted in response to a solicitation.
- ~~34-33.~~ "Prospective offeror" means a person that expresses an interest in a specific solicitation.
- ~~35-34.~~ "Purchase description" means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
- ~~36-35.~~ "Purchase request" or "purchase requisition" means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
- ~~37-36.~~ "Request for proposals" means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
- ~~38-37.~~ "Responsible bidder or offeror" means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
- ~~39-38.~~ "Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
- ~~40-39.~~ "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
- ~~41-40.~~ "Services" means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
- ~~42-41.~~ "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
- ~~43-42.~~ "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.
- ~~44-43.~~ "Specification" means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.
- ~~45-44.~~ "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.
- ~~46-45.~~ "Suspension" means an action taken by the Director ~~or the state procurement office of the Department of Administration under R2-7-C901~~ that temporarily disqualifies a person from participating in a state procurement process.
- ~~47-46.~~ "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.
- ~~48-47.~~ "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

R19-3-503. Confidential Information

- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term "confidential." Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.
- C. Upon protest to a confidential submission, the procurement officer shall request that the offeror and protester submit factual and legal comments on the issue by a date certain.
- D. After reviewing the statements or expiration of the time to comment, or both, the procurement officer shall make a deter-

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mination that:

1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest;
 2. The designated information is not confidential; or
 3. Additional information is required before a final confidentiality determination can be made.
- E. If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review in A.R.S. Title 41, Chapter 6, Article 10 apply to such a review by the Director.
- F. The procurement officer may release information designated as confidential under subsection (A) if:
1. A request for review is not received by the procurement officer within the time period specified in the notice; or
 2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

R19-3-505. Prospective Suppliers List

- A. The procurement officer shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the procurement officer the company name, address, e-mail, contact name, and area of product or service interest.
- B. The procurement officer may remove suppliers from the prospective suppliers list if a notice or e-mail sent to the supplier is returned. The procurement officer shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

R19-3-506. Source Selection Method: Determination Factors

- A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ ~~5-509~~ 5-559 and 41-2501(F).
- B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.
- C. ~~Before soliciting for offers for a competitive sealed proposal, the~~ The procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the Lottery before soliciting for offers for a competitive sealed proposal. Competitive sealed bidding. An invitation for bid may not be practicable or advantageous if it is necessary to:
1. Use a contract other than a fixed-price type;
 2. Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;
 3. Permit offerors to revise their offers; or
 4. Compare the different price, quality, and contractual factors of the offers submitted.
- D. The procurement officer may make a class determination that it is either not practicable or not advantageous to the Lottery to procure specified types of materials or services by invitation for bid. The procurement officer may modify or revoke a class determination at any time.
- E. The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

R19-3-508. Bid Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum required information in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h. Any evaluation criteria;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;

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- m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
- n. Any bid security required;
- o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
- p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
- q. Any other offer submission requirements;
- 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements;
- 3. Terms and Conditions, including:
 - a. Whether the contract will include an option for extension; and
 - b. Any other contract terms and conditions.

R19-3-509. Request for Proposal Solicitation Requirements

The procurement officer shall include the following in the solicitation:

- 1. Instructions to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum information required in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility or susceptibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
 - h. Evaluation factors and the relative order of importance;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any offer security required;
 - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any cost or pricing data required;
 - q. The type of contract to be used;
 - r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award and that fall within the competitive range; and
 - s. Any other offer requirements specific to the solicitation.
- 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
- 3. Terms and Conditions, including:
 - a. Whether the contract is to include an extension option; and
 - b. Any other contract terms and conditions.

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R19-3-511. Solicitation Amendment

- A. The procurement officer shall issue a solicitation amendment to do any or all of the following:
1. Make changes in the solicitation;
 2. Correct defects or ambiguities;
 3. Provide additional information or instructions; or
 4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.
- B. If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

R19-3-514. Receipt, Opening, and Recording of Offers

- A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C. ~~The~~ For a bid solicitation, the procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce the name of the offeror; the amount of each offer; and any other relevant information as determined by the procurement officer. The procurement officer shall record the name of each offeror; and the amount of each offer. The reader and the witness shall sign the record of offers and place it in the procurement file. The procurement officer shall make the record of offers available for public viewing.
- D. For a proposal solicitation, the procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.
- ~~D-E.~~ Except for the information identified in ~~subsection~~ subsections (C) and (D), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those persons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

R19-3-517. One Offer Received

If only one offer is received in response to a solicitation, the procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable under ~~R19-3-547~~; R19-3-550,
 - b. The offer is responsive; and
 - c. The offeror is responsible; or
2. Reject the offer and:
 - a. Resolicit for new offers;
 - b. Cancel the procurement; or
 - c. Use a different source selection method authorized under these rules.

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

- A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- C. The procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The procurement officer shall not permit a correc-

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tion that is prejudicial to the Lottery or fair competition.

- D. The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R19-3-520. Determination of Not Susceptible for Award

- A. The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award or not within the competitive range. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
 - 1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 - 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
 - 3. The offer is not susceptible for award or is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award or is in the competitive range, the offer should be included for further consideration.
- B. The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award or not within the competitive range, unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

R19-3-521. Bid Evaluation

- A. The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation. Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.
- B. The procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services, information systems, and telecommunication systems.
- C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

- A. The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the ~~offeror~~ procurement officer shall confirm the negotiations in writing and provide the document to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be in the competitive range or reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award and within the competitive range, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the final proposal revision due date and time by submitting a written request to the procurement officer.

R19-3-524. Final Proposal Revisions

- A. The procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not within the competitive range or not susceptible for award under R19-3-520 or non-responsive under R19-3-526. The procurement officer shall include in the written request:
 - 1. The date, time, and place for submission of final proposal revisions; and
 - 2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.

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- B. The procurement officer shall request written final proposal revisions only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.
- C. If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:
 - 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 - 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- D. An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and shall include the following in the written request:
 - 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected offer or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- E. In response to a request made under subsections (C) or (D), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the final proposal revision, the procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

R19-3-525. Evaluation of Proposal Offers

- A. The procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B. The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The procurement officer may:
 - 1. Accept or reject the findings of the evaluation committee;
 - 2. Request additional information from the evaluation committee; or
 - 3. Replace the evaluation committee.
- C. The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R19-3-528. Proposal Contract Award

- A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- B. Before awarding any cost reimbursement contract, the procurement officer shall determine in writing that:
 - 1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
 - 2. It is adequate to allocate costs under ~~R19-3-547~~ R19-3-550 through ~~R19-3-550~~ R19-3-553.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.
- D. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.
 - 1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
 - 2. The Lottery Commission shall not take action in the executive session.
 - 3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.
- E. The procurement officer shall notify all offerors of an award that has become effective and binding.
- F. After ~~a contract an~~ an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.
- G. Within 10 days after ~~contract an~~ award is effective and binding, the procurement officer shall make the procurement file,

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including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

R19-3-529. Mistakes Discovered After Bid Award

- A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

R19-3-530. Mistakes Discovered After Proposal Award

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.
- B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the Lottery according to the evaluation factors contained in the solicitation.

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-533 unless any of the following apply:

1. The purchase can be made from a state or agency contract;
2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636;
3. The purchase is not expected to exceed \$5,000.00;
4. The purchase is made as a sole-source procurement; or
5. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

R19-3-533. Request for Quotation Issuance

The procurement officer shall issue the request for quotation by ~~one of these methods:~~ distributing the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers invited to submit quotations. The procurement officer may cancel the request for quotation at any time.

1. ~~Post the request for quotation on the state procurement officer's centralized electronic system indicating the date that offers are due. The request for quotation shall be posted for a reasonable time as determined by the procurement officer based on the needs of the Lottery.~~
2. ~~Distribute the request for quotation to a minimum of three small businesses. The procurement officer shall rotate suppliers invited to submit quotations and shall invite at least one small minority or small women-owned business enterprise to submit a quote. If the procurement officer is unable to locate a small minority or small women-owned business enterprise, the procurement officer shall document in the procurement file.~~
3. ~~The procurement officer may cancel the request for quotation at any time by making a written determination that cancellation is advantageous to the Lottery.~~

R19-3-534. Quotation Contract Award

- A. If only one responsive offer is received, the procurement officer shall explain in writing whether award of the contract is advantageous to the Lottery and place the determination in the procurement file.
- B. The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.
- C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

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- D. The procurement officer shall make the procurement file available to the public on the date the contract award becomes ~~final~~ effective and binding.

R19-3-535. Sole Source Procurements

- A. For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
1. There is only a single source for the material or service; ~~or~~
 2. No reasonable alternative source exists.
- B. The procurement officer shall make a written determination that includes the following information:
1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
 2. The name of the proposed supplier;
 3. The duration and estimated total dollar value of the proposed procurement;
 4. Documentation that the price submitted is fair and reasonable pursuant to ~~R19-3-547; R19-3-550,~~ and
 5. A description of efforts made to seek other sources.
- C. The procurement officer shall post the request on the Lottery web site and ~~the state procurement office web site and send notice to registered vendors on the state’s electronic system to~~ invite comments on the sole-source request for ~~five~~ three working days. Following this period, the procurement officer shall either:
1. Issue a written determination with any conditions or restrictions; ~~or~~
 2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- D. If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.
- E. The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.
- F. The procurement officer shall keep a record of all sole-source procurements.

R19-3-537. Competition Impracticable Procurements

- A. For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. § ~~5-509~~ 5-559 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.
- B. The procurement officer shall make a written determination ~~for approval containing~~ that includes the following information:
1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § ~~5-509~~ 5-559 and these rules impracticable, unnecessary, or contrary to the public interest;
 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
 3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
 4. The scope, duration, and estimated total dollar value of the procurement need.
- C. The procurement officer shall keep a record of all competition impracticable procurements.

R19-3-538. Request for Information

The procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. ~~To the extent allowed by law, information~~ Information contained in a response to a request for information ~~may~~ shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the procurement officer.
3. There is no required format to be used for requests for information.

R19-3-539. Demonstration Projects

- A. The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:
1. Name of the contractor;
 2. Description of the project, including unique and innovative features of the project;
 3. Statement and explanation that the project is in the best interest of the Lottery;
 4. Duration of the project; and
 5. Proposed contract terms and conditions.
- B. Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or

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lease the services or materials from the contractor.

- C. The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:
 - 1. Name of the contractor;
 - 2. Description of the project, including unique and innovative features of the project;
 - 3. Statement and explanation that lease or purchase is in the best interest of the Lottery;
 - 4. Cost to the Lottery;
 - 5. Duration of the proposed contract; and
 - 6. Proposed contract terms and conditions.
- D. The term of the contract resulting from a demonstration project shall not exceed two years.

R19-3-540. General Services Administration Contracts

- A. The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
 - 1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery;
 - 2. Price is equal to or less than the contractor's current GSA price;
 - 3. Price is fair and reasonable;
 - 4. Contractor is willing to offer GSA pricing and terms to the Lottery;
 - 5. Comparable products or services are not available under a state or agency contract;
 - 6. Comparable products or services are not restricted under a set-aside contract; and
 - 7. Contractor accepts required Lottery contract terms and conditions.
- B. The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:
 - 1. Name of the contractor;
 - 2. GSA contract or schedule number;
 - 3. Procurement description;
 - 4. Analysis of price, quality, and other relevant factors; and
 - 5. Statement that the price is fair and reasonable.

R19-3-544. Contract Change Orders and Amendments

- A. The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B. Any contract change order or amendment not covered under subsection (A) that exceeds \$100,000 may be executed only if the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to ~~R19-3-547~~ R19-3-550.
- C. The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

R19-3-545. Multi-term Contracts

- A. Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.
- B. A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery. The written determination shall include:
 - 1. The initial and renewal option periods for the contract;
 - 2. Documentation that the estimated requirements are reasonable and continuing; and
 - 3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.
- C. The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R19-3-547. Mandatory Statewide Contracts

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts, unless a written determination is made by the procurement officer that the available statewide contracts do not meet the Lottery's needs.

R19-3-548. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the Lottery.

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unless a written determination is made by the procurement officer providing otherwise.

R19-3-549. Conflict of Interest

- A.** A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not receive any direct benefit from the utilization of those specifications, plans, or scopes of work.
- B.** The procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived.

~~R19-3-547.~~R19-3-550. Determination of Fair and Reasonable Price

- A.** For contracts or contract modifications that exceed \$100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
 - 1. The contract or modification is based on adequate price competition;
 - 2. Price is supported by an established catalog or market prices;
 - 3. Price is set by law or rule; or
 - 4. Price is supported by relevant, historical price data.
- B.** The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
 - 1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A);² or
 - 2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

~~R19-3-548.~~R19-3-551. Submission and Certification of Cost or Pricing Data

- A.** The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the procurement officer.
- B.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C.** The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief, as of a date mutually determined with the procurement officer.

~~R19-3-549.~~R19-3-552. Refusal to Submit Cost or Pricing Data

- A.** If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.
- B.** If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:
 - 1. Reject the contract modification; or
 - 2. Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10.

~~R19-3-550.~~R19-3-553. Defective Cost or Pricing Data

- A.** The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B.** The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C.** The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under ~~R19-3-554~~ R19-3-564 through ~~R19-3-559~~ R19-3-566. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

~~R19-3-551.~~R19-3-554. Protest of Solicitations and Contract Awards

- A.** Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B.** The interested party shall file the protest in writing with the procurement officer and shall include the following information:
 - 1. The name, address, and telephone number of the interested party;
 - 2. The signature of the interested party or the interested party's representative;
 - 3. Identification of the solicitation or contract number;
 - 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 - 5. The form of relief requested.
- C.** If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D.** In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.
- E.** The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in

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subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

- F. If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.
- G. The procurement officer shall immediately give notice of a protest to all offerors.

~~R19-3-552~~ R19-3-555. Stay of Procurements During the Protest

- A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:
 - 1. Proceed with the award or contract performance; or
 - 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.
- B. The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.
- C. Determination of a stay decision shall be issued no later than the time of issuance of the procurement officer's decision in accordance with R19-3-556.
- D. Should a stay request be denied by the procurement officer, the protestant may request a procurement stay from the Director. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer.

~~R19-3-553~~ R19-3-556. Resolution of Solicitation and Contract Award Protests

- A. The procurement officer has the authority to resolve a protest.
- B. The procurement officer shall issue a written decision within 14 days after a protest has been filed under ~~R19-3-551~~ R19-3-554. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision.
- C. The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.
- D. The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E. If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the procurement officer had issued an adverse decision.

~~R19-3-554~~ R19-3-557. Remedies by the Procurement Officer

- A. If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
 - 1. The seriousness of the procurement deficiency;
 - 2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
 - 3. The good faith of the parties;
 - 4. The extent of performance;
 - 5. The costs to the Lottery;
 - 6. The urgency of the procurement;
 - 7. The impact on the agency's mission; and
 - 8. Other relevant issues.
- C. The procurement officer may implement any of the following appropriate remedies:
 - 1. Decline to exercise an option to renew under the contract;
 - 2. Terminate the contract;
 - 3. Amend the solicitation;
 - 4. Issue a new solicitation;
 - 5. Award a contract consistent with procurement statutes and regulations; or
 - 6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

~~R19-3-558.~~ Issuance of a Timely Decision

~~If the procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.~~

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R19-3-558. Appeals to the Director Regarding Protest Decision

- A.** An interested party may appeal the decision entered or deemed to be entered by the procurement officer to the Director within 30 days after the date the decision is received or deemed received under R19-3-556. The interested party shall file a copy of the appeal with the Director and the procurement officer.
- B.** The interested party shall file the appeal in writing and shall include the following information:
 - 1. The information prescribed in R19-3-554(B) including the identification of confidential information under R19-3-503.
 - 2. A copy of the decision of the procurement officer, and
 - 3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C.** The Director may consider any appeal that is not filed timely if:
 - 1. The interested party shows good cause, or
 - 2. The Director finds there is a good cause.
- D.** The Director shall resolve appeals of solicitation decisions as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

R19-3-559. Notice of Appeal to the Director Regarding Protests

- A.** The procurement officer shall promptly give notice of the appeal to all offerors.
- B.** The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R19-3-503.

R19-3-560. Stay of Procurement During Appeal to Director

- A.** If a stay is issued under R19-3-555, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the Lottery.
- B.** Following a review of the procurement officer's decision and the interested party's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Lottery.

R19-3-561. Online Solicitation Process

The procurement officer may make a written determination that an online bidding as defined in A.R.S. § 41-2671 is most advantageous to the Lottery. The written determination shall include the following information:

- 1. An estimate of the number of prospective offerors;
- 2. A description of the proposed online procurement method to be utilized and an explanation of how this method will foster competition;
- 3. An explanation of why the proposed procurement method is advantageous to the Lottery; and
- 4. The scope, duration, and estimated total dollar value of the procurement need.

R19-3-555-R19-3-561. Agency Report Regarding Protest Appeals

- A.** The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 within ~~44~~ 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
 - 1. The appeal;
 - 2. The offer submitted by the interested party;
 - 3. The offer of the firm that is being considered for award;
 - 4. The solicitation, including the specifications or portions relevant to the appeal;
 - 5. The abstract of offers or relevant portions;
 - 6. Any other documents that are relevant to the protest; and
 - 7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B.** The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.
- C.** The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.
- D.** The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

R19-3-562. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination,

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or an award does not comply with procurement statutes and rules, the Director shall implement remedies as provided in R19-3-557.

R19-3-563. Dismissal Before Hearing

- A.** The Director shall dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest.
 2. The appeal is untimely as prescribed under R19-3-558, or
 3. The appeal attempts to raise issues not raised in the protest.
- B.** The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

~~R19-3-556~~R19-3-564. Controversies Involving Contract Claims Against the Lottery

- A.** A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;
 2. The signature of the claimant or claimant's representative;
 3. Identification of the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
 5. The form and dollar amount of the relief requested.
- B.** The procurement officer shall have the authority to settle and resolve contract claims.

~~R19-3-557~~R19-3-565. Procurement Officer's Decision Regarding Contract Claims

- A.** If a claim cannot be resolved under ~~R19-3-556~~ R19-3-564, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B.** The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:
1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the procurement officer's decision, with supporting rationale; and
 5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed ~~as an appealable agency action~~ under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in ~~R19-3-559(B)~~ R19-3-566(B) with the procurement officer within 30 days from the date you receive this decision."
- C.** If the procurement officer fails to issue a decision on a contract claim within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

~~R19-3-559~~R19-3-566. Appeals and Reports to the Director Regarding Contract Claims

- A.** The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.
- B.** The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the procurement officer;
 2. A statement of the factual areas of agreement or disagreement; and
 3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C.** The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D.** The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

~~R19-3-560~~R19-3-567. Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

~~R19-3-562~~R19-3-568. Guidance

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or A.A.C. R2-7-101 through ~~R2-7-1304~~ R2-7-1009.